

ORDINANCE NO. 2007-43

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 58 ENTITLED "OFFENSES", BY ADDING A NEW ARTICLE, ARTICLE IV. ENTITLED "LITTER REMOVAL" TO PROVIDE DEFINITIONS, PROHIBITION OF LITTERING; DECLARATION OF LITTERING AS A NUISANCE; RESPONSIBILITIES OF PROPERTY OWNERS, LITTER REMOVAL AND NOTICE; CODE ENFORCEMENT; AND \$250.00 FINE FOR FIRST VIOLATION; AND \$500.00 FOR EACH SUBSEQUENT VIOLATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the general purpose and intent of this ordinance is to provide proper fire prevention and protection regulations in the best interest of the health, safety, welfare and aesthetics of the community and the proper administration of its government; and

WHEREAS, the purpose and intent of this ordinance is provide an enforcement tool to remove litter that is pervasive in the community, especially in commercial and industrial areas.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 58 entitled "Offenses" of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by adding a new article, Article III entitled "Litter Removal", to read as follows:

Chapter 58

OFFENSES

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ARTICLE IV. LITTER REMOVAL

Sec. 58- . Definitions.

Unless it is apparent from the context that another meaning is intended, the following words when used in this article shall have the meanings attributed to them by this section:

Code enforcement officer means any designated employee, including a police officer, acting as an agent of the city whose duty it is to enforce codes and ordinances enacted or adopted by the city.

Commercial property means property that is used for business, commercial or for-profit purposes. It shall be prima facie evidence that a property is commercial if it is located in a commercial or industrial zoning district or land use classification and a multiple-family residential zoning district. "Commercial property" shall include, but is not limited to, nonpermanent structures such as trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes and construction equipment. "Commercial property" shall not include: (a) single-family homes or residential property of three or fewer units; (b) property owned by government; and (c) property used for nonprofit purposes by educational institutions, charities or religious institutions.

Litter means any discarded, used or unconsumed substance or waste material, whether made of aluminum, glass, glass, rubber, paper or other natural or synthetic material, or any combination thereof, including, but not limited to, any bottle, jar or can, any unlighted cigarette, cigar, match or any flaming or glowing material or any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging or construction material that has not been deposited in a litter receptacle or garbage or waste container.

Noncommercial property means all property that is not included in the definition of commercial property.

Nonpermanent structure means any object, device, entity

or any arrangement, organization or configuration of such objects, devices or entities not intended to be imperishable or invariable such as, but not limited to, trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes and construction equipment.

Owner means any and all persons with legal or equitable title to real property in the city as indicated in the county tax rolls.

Public right-of-way means any road, parkway, alley, swale, sidewalk or other right-of-way.

Sec. 58- . Littering prohibited.

No person shall throw, scatter, spill or place or caused to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon private or public property in the city or in the waters within the city except if such property is zoned for the disposal of garbage and refuse; except if placed in a trash container, garbage container or litter receptacle; or except if the city authorizes the placing of certain materials on property for city collection.

Sec. 58- . Declared nuisance.

The creation or maintenance of litter located on publicly or privately-owned real property in the city is hereby declared a nuisance.

Sec. 58- . Responsibility of property owner; litter removal and notice.

(a) Maintenance or allowance of litter to exist for more than 24 hours on a commercial property, or seven days on a residential property, is prohibited.

(b) Whenever the city becomes aware of the existence of litter on any property, a code enforcement officer is authorized to provide notice to the property owner, agent or manager to remove litter from the property and/or place litter in a covered trash container or garbage container if appropriate for such disposal.

(1) Commercial property. For commercial property,

the property owner, agent or manager shall remove litter from the property and/or place litter in a covered trash container or garbage container if appropriate for such collection and disposal within 24 hours from the receipt or delivery of the notice described in paragraph (c).

(2) Noncommercial property. For noncommercial property, the property owner, agent or manager shall remove litter from the property and/or place litter in a covered trash container or garbage container if appropriate for such collection and disposal within seven days from the receipt or delivery of the notice described in paragraph (c).

(c) Such notice shall be given by certified mail, return receipt requested, by hand-delivery or posted on the property by the code enforcement officer to the "home of record," as identified in the current county tax rolls. Notice shall be deemed complete and sufficient when so mailed, proper postage prepaid. The notice to remove litter shall substantially comply with the following language:

WARNING NOTICE TO REMOVE LITTER OR PLACE IN COVERED TRASH CONTAINER OR GARBAGE CONTAINER IF APPROPRIATE FOR SUCH COLLECTION AND DISPOSAL

TO THE OWNER, AGENT OF THE OWNER OR PERSON MANAGING THE PROPERTY HEREINAFTER DESCRIBED.

YOUR ATTENTION IS HEREBY DIRECTED TO THE PROVISIONS OF SECTION _____ OF THE HIALEAH CITY CODE. PURSUANT THERETO, YOU ARE HEREBY NOTIFIED THAT LITTER, WHICH IS DECLARED A NUISANCE IN THE CITY OF HIALEAH, EXISTS ON THE PREMISES SPECIFICALLY DESCRIBED AS _____, IS INJURIOUS TO THE HEALTH SO AS TO INTERFERE WITH THE COMFORTABLE ENJOYMENT OF LIFE OR PROPERTY, AND AFFECTS AT THE SAME TIME AN ENTIRE COMMUNITY OR NEIGHBORHOOD, OR ANY CONSIDERABLE NUMBER OF PERSONS, ALTHOUGH THE EXTENT OF THE ANNOYANCE OR

DAMAGE INFLICTED UPON INDIVIDUALS MAY BE UNEQUAL. YOU ARE THEREFORE NOTIFIED AT ONCE, AND IN ANY EVENT WITHIN 24 HOURS (FOR COMMERCIAL PROPERTY) OR 7 CALENDAR DAYS (FOR RESIDENTIAL PROPERTY) FROM THE RECEIPT OF THIS NOTICE, TO REMOVE LITTER FROM THE PROPERTY AND/OR PLACE LITTER IN A COVERED TRASH CONTAINER OR GARBAGE CONTAINER IF APPROPRIATE FOR SUCH COLLECTION AND DISPOSAL AND THEREAFTER TO KEEP THE PROPERTY FREE FROM LITTER THEREFROM.

IF YOU FAIL TO COMPLETE SUCH WORK WITHIN THE PERIOD HEREIN MENTIONED, THE CITY OF HIALEAH SHALL CAUSE THE SAME TO BE REMOVED AND THE COSTS OF SUCH WORK WILL BE IMPOSED AS A LIEN UPON THIS PROPERTY. THE ESTIMATED COSTS TO REMEDY THIS CONDITION ARE _____, PLUS \$50.00 FOR ADMINISTRATIVE CHARGES, FOR A TOTAL COST OF _____.

NOTICE POSTED AT _____ A.M./P.M.

DATED AT HIALEAH, FLORIDA THIS _____ DAY OF _____, 20____.

OFFICER

Sec. 58-_____. Procedures.

The procedures of Chapter 22 of the Code shall govern to the extent that a civil violation notice or citation is issued for a violation of this article.

Sec. 58-_____. Costs of litter removal as lien on property – collection, foreclosure and sale.

(a) Upon failure of the property owner to remedy the conditions after notice and the compliance period has elapsed, the code enforcement officer shall proceed to have such condition remedied by the city or its agent in an effort to abate the nuisance.

(b) A city employee or its agent may enter upon private property to abate the nuisance. No person shall obstruct, impede or interfere with any city employee or its agent whenever such person engages in the work of litter removal or in performing any necessary act preliminary to or incidental to such work.

(c) Following corrective action taken or litter removal by the city or its agent, the code enforcement officer shall proceed to have all costs incurred thereof to be and become a lien against such property 30 days after notice of the completed work to the same extent and character as code enforcement liens, and with the same penalties and with the same rights of collections, foreclosure, sale and forfeiture as outlined for code enforcement liens. The costs chargeable to the owner shall not exceed the amount of cost, as set forth in the notice served to the property owner.

Sec. 58- . Procedure to dispute assessed costs set forth in warning notice.

(a) Any person owning property that has been found to be in violation of this article, and upon which corrective work by the city has been done, shall have the right, at any time within 30 days after receipt or posting of the notice of completed work, to present to the police chief a sworn petition stating his interest in the property and alleging that in the opinion of the petitioner the cost of the work exceeds the actual costs thereof or is otherwise erroneous.

(b) Such petition shall be presented to either the code enforcement board or special master for a final determination.

Sec. 58- . Violations.

The code enforcement officer shall fine any person violating this section \$250.00 for the first offense and \$500.00 for each subsequent violation, or as provided by the imposition of fines in Section 22-184 of the Code.

ARTICLE IV V. NOISE

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Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

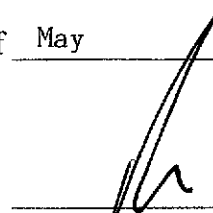
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 8 day of May, 2007.

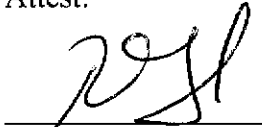
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



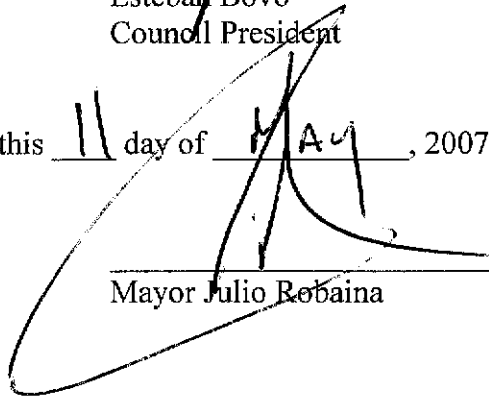
Esteban Bovo
Council President

Attest:

Approved on this 11 day of May, 2007.



Rafael E. Granado, City Clerk



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Gonzalez, Hernandez, Miel and Yedra voting "Yes".